

length to reduce the possibility that the recovery sheath will straighten the body vessel once advanced over the length of tubing. Claim 68 further requires the length of flexible tubing to be at least as long as the longitudinal length of the expandable filter. As addressed above, the only portion of the inner catheter of the Daniel device which extends beyond the distal end of the outer catheter is the small tapered tip (180) of the insert (176). Even assuming arguendo that this tapered tip (180) constitutes a length of tubing, it certainly does not have a length at least as long as the longitudinal length of the filter device depicted in Figures 20 and 21 of the Daniel patent. Accordingly, it is urged that independent claim 68 and its dependent claim 69 avoid anticipation for this additional reason and that the rejection of claims 68 and 69 under 35 U.S.C. § 102(e) should be withdrawn.

Claims 41 and 51 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel in view of the Heyn patent. Claim 38 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel. Since the Daniel patent lacks the basic components recited in the claims, as addressed above, it by itself or in combination with the Heyn patent fails to achieve the structure recited in these claims. The teachings of the Heyn patent fail to supply the missing structure from the Daniel patent.

Accordingly, it is urged that dependent claims 38, 41 and 51 avoid obviousness and that the rejection of these claims under 35 U.S.C. § 103(a) should be reversed.

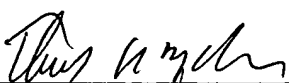
#### **IV. CONCLUSION**

For the foregoing reasons, it is submitted that the present invention as claimed is not anticipated by the Daniel patent and that the Examiner's rejections of claims 35-37, 39-40, 42-50 and 51-74 were erroneous. Further, it is submitted that the present invention as claimed is not

obvious and that the Examiner's rejection of claims 38, 41 and 51 was improper. Appellants respectfully request reversal of the rejection of pending claims 35-74.

Respectfully submitted,

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